No. 15-0197

IN THE SUPREME COURT OF TEXAS

UDR TEXAS PROPERTIES, L.P. d/b/a THE GALLERY APARTMENTS, UNITED DOMINION REALTY TRUST, INC., ASR OF DELAWARE, L.L.C., and UDR WESTERN RESIDENTIAL, INC.,

Petitioners,

v.

ALAN PETRIE,

Respondent.

On Petition for Review from the
Court of Appeals at Houston [14th District]

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

Pacific Legal Foundation respectfully submits this brief amicus curiae in support of Petitioner UDR Texas Properties, L.P., et al., pursuant to Texas Rule of Appellate Procedure 11.

IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation (PLF) is the most experienced public interest law foundation of its kind in America. Founded in 1973, PLF provides a voice in the courts for mainstream Americans who believe in limited government, private property rights, individual freedom, and free enterprise. Thousands of individuals across the country, including residents of Texas, support PLF, as do numerous organizations and associations nationwide.

In furtherance of PLF's continuing mission to defend individual and economic liberty, the Foundation created its Free Enterprise Project. Through that project, the Foundation seeks to protect the free enterprise system from abusive regulation, the unwarranted expansion of claims and remedies in state civil justice systems, and barriers to the freedom of contract. Pursuant to this Project, PLF has participated as amicus curiae in Texas courts in cases involving the reach and scope of premises liability. *See, e.g.*, *Occidental Chem. Corp. v. Jenkins*, 478 S.W.3d 640 (Tex. 2016); *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762 (Tex. 2010); *Trammell Crow Central Texas, Ltd. v. Gutierrez*, 267 S.W.3d 9 (Tex. 2008); *Western Investments,*

Inc., *v. Urena*, 162 S.W.3d 547 (Tex. 2005). PLF also filed amicus briefs in other state high courts on the premises liability issues presented in this case. *See*, *e.g.*, *Pink v. Ricci*, No. 2015-00073 (N.Y. Ct. App. filed Mar. 20, 2015); *Rodriguez v. Del Sol Shopping Center Associates, L.P.*, 326 P.3d 465 (N.M. 2014); *Bass v. Gopal, Inc.*, 716 S.E.2d 910 (S.C. 2011); *Giggers v. Memphis Housing Authority*, 277 S.W.3d 359 (Tenn. 2009). In addition, PLF attorneys have published law review articles on the impact of tort liability in general, and premises liability specifically. *See, e.g.*, Antonio J. Senagore, *The Benefits of Limiting Strict Liability for Used-Product Sellers*, 30 N. Ill. U. L. Rev. 349 (2010); Alissa Strong, *"But He Told Me It Was Safe!" The Expanding Tort of Negligent Misrepresentation*, 40 U. Mem. L. Rev. 105 (2009); Deborah J. La Fetra, *A Moving Target: Property Owners' Duty to Prevent Criminal Acts on the Premises*, 28 Whittier L. Rev. 409 (2006); Deborah J. La Fetra, *Freedom, Responsibility, and Risk: Fundamental Principles Supporting Tort Reform*, 36 Ind. L. Rev. 645 (2003).

INTRODUCTION AND SUMMARY OF ARGUMENT

Alan Petrie was robbed and shot in the knee in the visitor parking area just outside the security gate of the Gallery Apartments, near the Richmond nightclub strip in Houston. He sued the apartment complex management companies for negligence due to their failure to "make the premises safe or to warn residents and invitees of the dangerous conditions on and around the premises." *Petrie v. UDR Texas Properties,*

L.P., No. 14-13-00123-CV, 2014 WL 7174242, at *1 (Tex. App. - Hous. [14th Dist.] Dec. 9, 2014). The court below interpreted Petrie's claims to demand that the apartment complex ownership owed him a duty "to protect [him] from the dangers associated [with] criminal conduct." *Id.* at *4. Houston is well known for its lack of zoning, and residential and commercial establishments are intermingled. The court of appeals held that the attack on Petrie was foreseeable based on evidence of the crime rate in a half-mile radius of the surrounding area, which includes the nightclub strip where Petrie worked. *Id.* at *5. The nightclub strip maintained a relatively constant high level of violent crime that the court believed would "travel" to the apartment complex. *Id.* at *8.

Under this Court's decision in *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749 (Tex. 1998), a property owner owes a duty to protect invitees from crimes committed by third parties only when the risk of the crime is foreseeable *and* the risk to the plaintiff of that crime occurring is unreasonable and outweighs the magnitude of placing the burden to guard against that risk on the property owner. *Id.* at 756 ("If a landowner had a duty to protect people on his property from criminal conduct whenever crime might occur, the duty would be universal. This is not the law. A duty exists only when the risk of criminal conduct is so great that it is both unreasonable and foreseeable."); *see also Trammell Crow Cent. Texas, Ltd. v. Gutierrez*, 267 S.W.3d 9, 18 (Tex. 2008) (Jefferson, C.J., concurring) (There should

be no duty, even where a criminal act was foreseeable, if "the consequences of requiring premises owners to prevent this type of crime would require a measure of deterrence that is neither feasible nor desirable.").

The appellate court in this case conflated these two distinct elements, holding that a property owner must protect invitees against any attack determined to be foreseeable, regardless of whether the imposition of a duty is reasonable. Reasonableness is usually determined by reference to the cost of burdensome security measures and the economic consequences of expansive tort liability. Moreover, the lower court failed to account for the plaintiff's personal knowledge of the area, which tends to negate the foundation of premises liability that the property owner has superior knowledge of dangers.

The decision below should be reversed.

ARGUMENT

I

PREMISES LIABILITY IS BASED ON A LANDOWNER'S SUPERIOR KNOWLEDGE AND CONTROL

Premises liability is predicated on the landowner's control over the premises. *Occidental Chem. Corp. v. Jenkins*, 478 S.W.3d 640, 644 (Tex. 2016) (A duty under a premises liability theory "runs with the ownership or control of the property."). There is some risk of criminal activity on the premises of any institution or any

establishment, at any time, at any place. The common law establishes limitations on a property owner's duty because, in addition to identifying the party that caused the harm, courts must consider public policy to determine who should bear the cost of the harm. *Smith v. Merritt*, 940 S.W.2d 602, 604-05 (Tex. 1997) (Whether to impose a duty depends on "competing societal concerns and public policy issues inherent in such a decision."). Every act has a potentially infinite number of consequences, so that if a property owner were required to pay for every potential wrong resulting from an action, economic enterprise simply could not go on. "At some point," therefore, "it is generally agreed that the defendant's act cannot fairly be singled out from the multitude of other events that combine to cause loss." Harvey S. Perlman, *Interference with Contract and Other Economic Expectancies: A Clash of Tort and Contract Doctrine*, 49 U. Chi. L. Rev. 61, 70 (1982). *See also Trammell Crow Cent. Texas, Ltd. v. Gutierrez*, 267 S.W.3d 9, 17 (Tex. 2008) ("[A] landowner is not the insurer of crime victims."); *CMH Homes, Inc. v. Daenen*, 15 S.W.3d 97, 101 (Tex. 2000) (An owner or occupier is not an insurer of injuries to its invitees.).

A. Premises Liability Should Attach Only Where the Owner Has Both Control and Superior Knowledge of the Reasonably Foreseeable Crime

Premises liability is grounded on two theoretical assumptions: First, the property owner controls the premises and is therefore responsible for dangerous conditions on the property. *General Elec. Co. v. Moritz*, 257 S.W.3d 211, 215

(Tex. 2008) (landowner "has a duty to inspect the premises and warn of concealed hazards the owner knows or should have known about") (citation and emphasis omitted). Second, the landowner is in a superior position to know of and remedy dangerous instrumentalities or conditions on his property. *Austin v. Kroger Texas, L.P.*, 465 S.W.3d 193, 203 (2015) (The reason "for imposing a duty on landowners in the first place" is that the "landowner is typically in a better position than the invitee to be aware of hidden hazards on the premises, so the law mandates that the landowner take precautions to protect invitees against such hazards, to the extent the landowner is or should be aware of them."); *Lloyd v. Bowles*, 260 Md. 568, 273 A.2d 193, 196 (1971) ("If the injured person knew or should have known of the dangerous condition, there is no right to recovery. . . . [T]he reason for the latter ruling being that the [landowner's] liability is based on a presumption that he has greater knowledge concerning the dangerous condition than the invitee."); *Berry v. Houchens Market of Tenn., Inc.*, 253 S.W.3d 141 (Tenn. App. 2007) ("In premises liability cases, the superior knowledge of the condition of the premises possessed by the owner or operator is the basis of liability.") (citing *Eaton v. McLain*, 891 S.W.2d 587, 593-94 (Tenn. 1994)).

The first assumption, that a landowner controls his property and should therefore be responsible for it, is sound. However, while a property owner can control the premises, he cannot control criminals. *See Erickson v. Curtis Inv. Co.*, 447

N.W.2d 165, 169 (Minn. 1989) ("There is a difference between a landowner's duty to sand a slippery step on his premises and his duty to contain a slippery criminal. In the latter instance, the landowner is being asked to take defensive measures against a third person not within his control, indeed, someone who tries to outwit any defenses."). The "crucial distinction" is "between the risk of injury from a physical defect in the property, and the risk from the criminal act of a third person." *Feld v. Merriam*, 485 A.2d 742, 746 (Pa. 1983). As the Pennsylvania Supreme Court explained, a property owner generally may be liable for injuries resulting from his refusal to correct a known and verifiable defect, but "the risk of injury from the criminal acts of third persons arises not from the conduct of the landlord but from the conduct of an unpredictable independent agent." *Id.* Imposition of a general duty to protect against third-party criminal acts "would effectively require landlords to be insurers of their tenants' safety: a burden which could never be completely met given the unfortunate realities of modern society." *Id*.

The second assumption, a property owner's superior knowledge, applies only insofar as a landowner has knowledge above and beyond that of the general public of a pattern of similar crimes on his property. *Austin*, 465 S.W.3d at 206 (confirming the general rule that "a landowner has no duty to warn an invitee of unreasonably dangerous conditions that are obvious or known to the invitee" while acknowledging a narrow exception where "the landowner should have anticipated that the harm would

occur despite the invitee's knowledge of the risks."). If a criminal act is not foreseeable, it logically follows that the landowner does not have superior knowledge of the danger of its occurrence. But even if the criminal act is foreseeable, it does not necessarily follow that the landowner has superior knowledge, because the danger may be equally apparent to the plaintiff.

The Georgia Court of Appeals applied this principle in *Killebrew v. Sun Trust Banks, Inc*., 221 Ga. App. 679, 680, 472 S.E.2d 504 (1996), relating to a robbery at an ATM. It noted that a bank can be expected to have the knowledge that thieves may prey on bank customers using an ATM. But, the court explained, the "danger of criminal activity is *equally apparent to the plaintiff as a member of the public*—unless the bank has specific knowledge leading to an awareness that a particular ATM is even more dangerous than it appears to members of the public based on their general knowledge." *Id*. (emphasis added).

Texas courts employ this general approach as well. For example, the Court of Appeals in *Zavala v. Burlington Northern Santa Fe Corp*., 355 S.W.3d 359 (Tex. App. - El Paso 2011), rejected the plaintiff's premises liability claim because he did not allege any defect or dangerous condition that "was not known or obvious," and "the occupier of premises has no duty to warn a business invitee of dangerous conditions that are obvious, reasonably apparent or as well known to the person injured as they are to the owner or occupier." *Id.* at 367 (citation omitted). This

Court's decision in *General Elec. Co. v. Moritz*, 257 S.W.3d at 216, 218, also turned in part on the fact that the plaintiff had used the allegedly defective ramp that lacked handrails every day for more than a year. If this was a defect, it was an open and obvious one. *See also Maddox v. Townsend and Sons, Inc.*, 639 F.3d 214, 222 (5th Cir. 2011) ("No warning is needed for readily apparent dangers because the owner's warning would just state the obvious."); *Feathers v. Willamette Indus., Inc.*, 162 F. App'x 561, 569 (6th Cir. 2006) (no duty under premises liability theory to prevent harm or warn of the danger where the danger is obvious); *Vaughn v. Ambrosino*, 883 So. 2d 1167, 1170-71 (Miss. 2004) ("it would be strange logic that found it reasonable to allow a plaintiff to pursue a claim against a defendant for failure to warn of an open and obvious danger. . . . . Stated [] another way, a thing warned of is either already known to the plaintiff, or it's not. If it's already known to the plaintiff, then the warning serves no purpose." (footnote omitted)).[1]

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[1] The role of the plaintiff also arises in the context of comparative fault. In *Hardee v. Cunningham & Smith, Inc.*, 679 So. 2d 1316, 1317 (Fla. App. 1996), the plaintiff was assaulted at a self-service carwash located in "an area known to have criminal activity" at 8:00 on a March evening (after sunset). Given that "[c]rime is a problem for everyone, not just business owners and their patrons," the court held that the plaintiff may have himself been negligent by electing to wash his car "then and there." *Id*. at 1318. As law professor William K. Jones explains, "No one is compelled to endure a predatory attack. And the predator cannot defend on the ground that the victim was careless. But when a charge of negligence is levied against a delinquent sentinel, the victim's own prudence can be called into question in assessing comparative fault." *Tort Triad: Slumbering Sentinels, Vicious Assailants, and Victims Variously Vigilant*, 30 Hofstra L. Rev. 253, 290 (2001).

Alan Petrie worked at one of the nightclubs on the Richmond Strip near the Gallery Apartments. *Petrie*, 2014 WL 7174242, at *1. According to Petrie's witnesses, the LaBare nightclub (where he worked) was so close to the Gallery Apartments that club patrons routinely parked in the complex parking lot and walked across Fairdale Avenue to the club. Petrie Brief at 16-17. One of the witnesses, Sean Luke, was Petrie's co-worker at LaBare and lived at the Gallery Apartments. Petrie Brief at 19. While the court may reasonably assume that the management of the Gallery Apartments was aware of the heightened level of criminal activity in the area, the court should, under the circumstances, also presume that Petrie, who did not wander unknowingly into a bad part of town, but instead worked and socialized in the area, was equally aware. Without superior knowledge, there is no logical reason to find that the apartment complex management companies had a duty to warn Petrie of facts he already must have known.

B. A Premises Owner Is Not Held to a Heightened Duty Standard Because the Property Is in a High Crime Area

The court below emphasized that the violent crime endemic to the Richmond nightclub strip would "travel" to the nearby apartment complex. *Petrie*, 2014 WL 7174242, at *8. While amicus recognizes the fact of the proximity of the club and the apartments, the court's treatment of this fact raises serious public policy concerns.

Most courts do not alter the standard duty analysis even if the property is alleged to be *within* a high-crime area, much less *adjacent* to one. *See, e.g.*, *Keenan v. Miriam Foundation*, 784 S.W.2d 298, 301-02 (Mo. App. 1990) ("crime is foreseeable in society, but the fact that crimes, in general, have occurred in an area or that a business is located in a high crime area is insufficient to invoke the duty").[2] As the district court in New Jersey explained, the general observation that more criminal activity occurs during the hours of 2:00 a.m. and 6:00 a.m. does not bear on a defendant's duty to protect invitees from third-party criminal acts during that time, because "to hold otherwise would require that all business establishments in Atlantic City that have invitees on their premises from 2:00am through 6:00am insure the absolute safety of their patrons." *Lanigan v. Marina Dist. Dev. Co., LLC*, No. 08-5201, 2011 WL 1211320, at *4 (D.N.J. Mar. 28, 2011). Such a holding would be contrary to the law.

The court relied on a similar rationale in *Stafford v. Church's Fried Chicken, Inc.*, 629 F. Supp. 1109 (E.D. Mich. 1986), *aff'd per curiam*, 815 F.2d 80 (6th Cir. 1987). In that case, a customer at a restaurant drive-through window was robbed and assaulted. She sued the restaurant for failing to protect her from the third-party

[2] There is no generally-accepted, empirical, objective definition of a "high-crime area," despite frequent use of the term, particularly in Fourth Amendment jurisprudence. Andrew Guthrie Ferguson & Damien Bernache, *The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis*, 57 Am. U. L. Rev. 1587, 1591 (2008).

criminal assault, specifically arguing that the restaurant was located in a high-crime area and the owners therefore knew they should have hired private security guards to protect customers. The court rejected this argument: "The duty advanced by Plaintiff is the duty to provide police protection. The Court notes that neither the Legislature nor the Courts have established public policy requiring law enforcement responsibilities to be extended to commercial businesses." *Id.* at 1110. The court further accepted the economic public policy argument that "[t]o hold restaurant owners responsible for providing police protection against the criminal conduct of third parties outside of the restaurant, especially those in 'high crime' areas, may drive businesses out of those neighborhoods." *Id. See also MacDonald v. PKT, Inc.*, 464 Mich. 322, 335, 628 N.W.2d 33 (2001) ("[I]t is unjustifiable to make merchants, who not only have much less experience than the police in dealing with criminal activity but are also without a community deputation to do so, effectively vicariously liable for the criminal acts of third parties.").

The Washington Supreme Court agreed, rejecting "the idea that location of the premises in an urban area with a high incidence of crime favors imposing a duty," because "if the premises are located in an area where criminal assaults often occur, imposition of a duty could result in the departure of businesses from urban core areas—an undesirable result." *McKown v. Simon Property Group, Inc.*, 182 Wash.2d 752, 768, 344 P.3d 661 (2015) (citation omitted). *See also Boren v. Worthen Nat'l*

Bank of Ark., 324 Ark. 416, 428, 921 S.W.2d 934 (1996) ("We . . . cannot say that it would be appropriate as a matter of policy to impose a higher duty on business owners who are willing to provide their services in 'high crime areas' or 'near a housing project'—most commonly the areas in which low and moderate income residents are to be found."); *McNeal v. Henry*, 82 Mich. App. 88, 90 n.1, 266 N.W.2d 469 (1978) ("Some of our big cities have more than their share of destructive and violent persons, young and old, who roam through downtown department stores and other small retail businesses stealing and physically abusing legitimate patrons. . . .. We fear that to hold businessmen liable for the clearly unforeseeable third-party torts and crimes incident to these activities would eventually drive them out of business"); *Posecai v. Wal-Mart Stores, Inc*., 752 So. 2d 762, 768 (La. 1999) ("Security is a significant monetary expense for any business and further increases the cost of doing business in high crime areas that are already economically depressed."); *Miller v. Whitworth*, 455 S.E.2d 821, 827 (W. Va. 1995) (denying liability for attack in mobile home park because "[p]roviding security to tenants costs money, and some tenants would not be able to afford the rent a landlord would have to charge to provide security in high crime areas. The result would be that low-income persons may find themselves without any housing."). As a Louisiana court explained:

> The more the courts try to off-load the sovereign's responsibility for random third-party criminal acts onto neighborhood businesses, the harder it will be to induce providers of basic services such as grocery

> stores and pharmacies to locate in high crime areas; and those that do so must then compensate by charging more to offset the added insurance and security expenses. This contributes to the well known fact that residents in poverty areas, which are normally also the areas of the highest crime, tend to pay a premium for essential services in spite of the fact that they are the least able to pay.

Thompson v. Winn-Dixie La., Inc., 812 So. 2d 829, 832 (La. Ct. App. 2002).

In *Rosen v. Red Roof Inns, Inc.*, 950 F. Supp. 156 (E.D. Va. 1997), the district court rejected a plaintiff's argument that the budget motel at which she was assaulted had a duty to protect her because its location in a high-crime area near a highway allegedly lured unsuspecting travelers onto the premises. The court noted that budget motels' business model requires them to locate near major thoroughfares, frequently in low-income, high-crime areas. By this means, they are able to offer lower room rental rates, providing lodging to travelers unable to afford higher-priced hotels. *Id.* at 161-62. For this reason, the court declined to impose a higher duty that "would make budget motels negligent per se for the criminal acts of third parties and likely drive them out of high-crime poor areas." *Id.* at 162.

Courts should not attempt to assist crime-fighting efforts "by enlisting property owners in the battle through the threat of tort liability." Stephen D. Sugarman, *Judges as Tort Law Un-Makers: Recent California Experience with "New" Torts*, 49 DePaul L. Rev. 455, 459 (1999). Thus, this Court should not impose heightened duties—with

significant economic consequences—on low-income, high-crime neighborhoods that are least able to afford them.

Finally, there are better ways to spread the cost of injuries sustained due to criminal acts among members of the whole community, rather than focusing on property- and business-owners. *See* La Fetra, *A Moving Target*, 28 Whittier L. Rev. at 418. Many states, including Texas, mitigate some of the financial burdens thrust upon crime victims by providing funds to cover their medical expenses, lost work time, and property loss and damage. The Texas Crime Victim Compensation program, Tex. Code Crim. Proc. Ann. art. 56.31, reimburses innocent victims for certain out-of-pocket expenses (lost wages, rehabilitation expenses, etc.) incurred as a result of violent crime.[3] For these reasons, a property's location in a high-crime area should not, as a matter of course, impose a heightened duty to protect invitees from the criminal acts of third parties.

[3] *See* https://texasattorneygeneral.gov/cvs/crime-victims-compensation.

II

PUBLIC POLICY DEMANDS SEPARATE CONSIDERATION OF THE REASONABLENESS OF A DUTY

Policy considerations are especially important when considering whether to create or expand a legal duty.

> Duty decisions, by long judicial custom, are read broadly. They create rules, they carry the weight of precedent, and they are meant to govern categories of future cases. Although battles often range in later cases over the breadth of a prior court's duty holding, the common judicial understanding is that the rule might well apply beyond the facts of the case that established it.

W. Jonathan Cardi, *Purging Foreseeability: The New Vision of Duty and Judicial Power in the Proposed Restatement (Third) of Torts*, 58 Vand L. Rev. 739, 803 (2005). The facts of this case center on an apartment complex. But the ruling in this case will have an effect not only on the potential liability for owners and managers of residential properties, but for commercial property owners and managers as well. Houston's intermixing of residential and commercial properties particularly brings the policy concerns to the foreground.

Contrary to the common perception that the costs of new legal rules fall on faceless corporations and "big business," those costs are ultimately borne by individuals through higher prices for goods and services, reduced wages, and

decreased investment returns. Council of Economic Advisers, *Who Pays for Tort Liability Claims? An Economic Analysis of the U.S. Tort Liability System* (Apr. 2002).[4] If the cost of a precaution against a risk outweighs the risk itself, then it would end up harming the public *more* to require such precautions. As Nobel Laureate Friedrich Hayek noted, liability rules "will normally raise the cost of production, or, what amounts to the same thing, reduce over-all productivity." Friedrich Hayek, *The Constitution of Liberty* 197 (2006). A presumption against imposing liability is justified because the "over-all cost is almost always underestimated." *Id.*

This underestimation is due to the fact that tort law has the potential of stifling entrepreneurial activity, driving away investors, and depriving society of jobs, as well as goods and services, that might otherwise have existed. Businesses can only absorb a certain amount of additional cost before passing those costs onto the customers they serve. If the goods become too high-priced, they will not sell and the business will close. Or if the business decides that it cannot recoup its costs, then it simply will find another location where the clientele can afford the higher prices. *See Dye v. Schwegmann Bros. Giant Supermarkets, Inc.*, 627 So. 2d 688, 695 (La. Ct. App. 1993) ("If merchants are held responsible for random crime they will be forced to move out

[4] https://www.heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/13266.pdf.

of high crime areas. It is the equivalent of imposing a tax or penalty on merchants in high crime areas. Their liability insurance rates would skyrocket, or if they can't obtain such insurance, their self-insurance exposure would become intolerable.").

This has a further economically depressing effect on residents of low-income areas who themselves wish to become entrepreneurs, but find the entry costs too high. Because these entrepreneurs would hire other residents, the total effect of a business precluded from opening is increased joblessness; fewer available, affordable services; and a neighborhood that remains mired in economically depressed circumstances. Since these jobs, goods, and services never come into existence once a legal cost is imposed on all businesses, it is easy to overlook these costs to society. *See generally* Frederic Bastiat, *That Which Is Seen, and That Which Is Not Seen* (1850).[5]

All these public policy concerns counsel caution when it comes to imposing a duty on property owners to protect against third-party criminal acts on the premises. The decision below erroneously focused solely on the foreseeability of the attack on Petrie, and failed to consider the economic impact and other public policies relevant to the imposition of a legal duty. This Court should rectify that error by highlighting the importance of the public policies favoring affordable housing and economic

[5] http://bastiat.org/en/twisatwins.html.

enterprise, particularly in lower-income neighborhoods that suffer the most when prices increase.

CONCLUSION

The decision below should be reversed.

DATED: May ___, 2016.

Respectfully submitted,

/s/ Wencong Fa
WENCONG FA

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that the foregoing BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS is proportionately spaced, has a typeface of 14 points or more, and contains 4495 words.

DATED: May ___, 2016.

/s/ Wencong Fa
WENCONG FA

CERTIFICATE OF SERVICE

I certify that a true and correct copy of BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS was electronically served on all parties through counsel of record as shown below on May ___, 2016.

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